



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

January 8, 2003

Mr. Dick H. Gregg, Jr.
City Attorney
City of Kemah
16055 Space Center Boulevard, Ste. 150
Houston, Texas 77062

OR2003-0161

Dear Mr. Gregg:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174710.

The City of Kemah (the "city"), which you represent, received a request for copies of "plans, applications, submissions and other documents for permits or development approvals" relating to a specified property. The requestor also seeks copies of "correspondence between the [city] and Matt Wiggins or any other applicant" relating to this property and commercial development. You state that you have provided the requestor with some responsive information. You claim, however, that the remaining requested information is excepted from disclosure pursuant to section 552.107 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Section 552.107(1) protects information encompassed by the attorney-client privilege. In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and the client's confidences made to the attorney. *See* Open Records Decision No. 574 (1990). Accordingly, these two classes of information are the only information contained in the records at issue that may be withheld pursuant to the attorney-client privilege. The privilege does not apply to all client information held by a governmental body's attorney. *See id.* at 5. This office recently refined this position and determined that when a governmental body demonstrates that a communication is protected by the attorney-client privilege as defined by rule 503 of the Texas Rules of Evidence, the entire communication is excepted from disclosure under section 552.107. *See* Open Records

Decision No. 676 at 5 (2002). A governmental body that raises section 552.107 bears the burden of explaining how the particular information requested is protected by the attorney-client privilege. *See id.* at 6; *see also Strong v. State*, 773 S.W.2d 543, 552 (Tex. Crim. App. 1989) (burden of establishing attorney-client privilege is on party asserting it). Based on our review of your arguments and the information that has not already been provided to the requestor, we agree that most of this information reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinion provided in furtherance of the rendition of legal services to the client. Accordingly, we conclude that the city may withhold the information that we have marked pursuant to section 552.107(1). However, since the remaining information does not constitute a confidential communication from the client to the attorney or the attorney's legal advice or opinion provided in furtherance of the rendition of legal services to the client, the city may not withhold this information under section 552.107(1) of the Government Code. Consequently, the city must release the information that we have marked for release to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

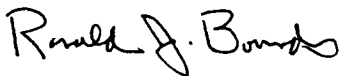
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 174710

Enc. Marked documents

c: Mr. Gene L. Locke
600 Travis, Suite 4200
Houston, Texas 77002
(w/o enclosures)